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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/541,301	04/03/00	AYABE	B 3-7-26

WM01/0904

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EXAMINER	
CUMMING,W	
ART UNIT	**PAPER NUMBER**
2684	6

DATE MAILED: 09/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/541,301	AYABE ET AL.	
	Examiner	Art Unit	
	WILLIAM D. CUMMING	2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 April 2000* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7,10,11,13 and 18-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7,10,11,13,18-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP ' 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC ' 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

   (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

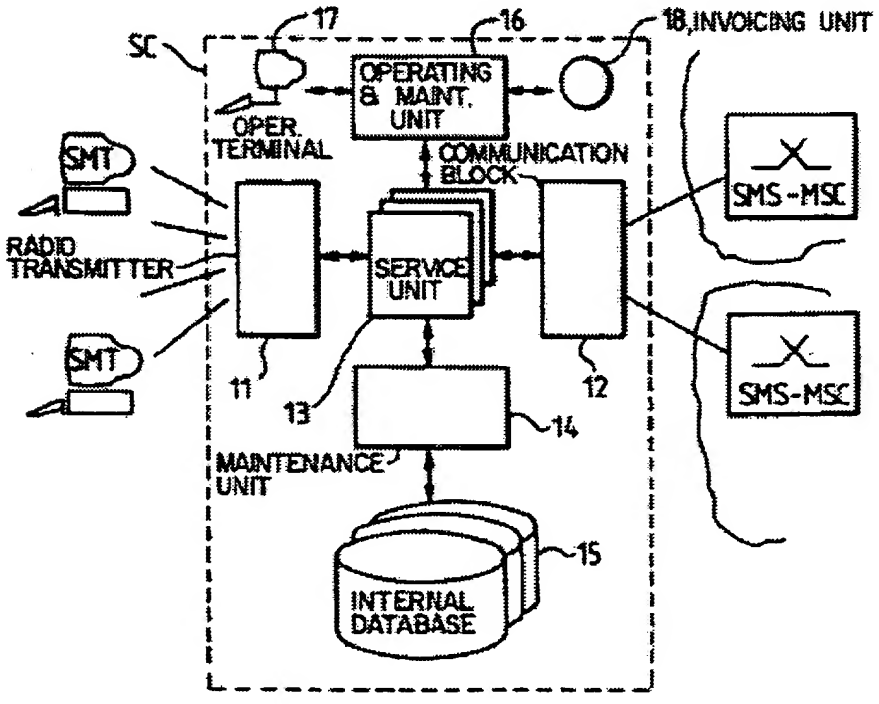
3. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

   1. Determining the scope and contents of the prior art.
   2. Ascertaining the differences between the prior art and the claims at issue.
   3. Resolving the level of ordinary skill in the pertinent art.
   4. Considering objective evidence present in the application indicating obviousness or unobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 1038 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-5, 7, 10, 11, 13, and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kralowetz, et al** in view of **Lahtinen.**

Kralowetz, et al disclose all subject matter claimed, note column 2, lines 19-29, column 3, line 66 to column 4, line 8, column 10, lines 24-44, etc., except for a packager that packages the fragments into the data packages such that the data packages are operable to be separately transmitted by a short message service over the conveying network. **Lahtinen** teaches the use of a packager that packages the fragments into the data packages such that the data packages are operable to be separately transmitted by a short message service over the conveying network (figures 3, 4, 6, and 7) in a system capable of transmitting for the purpose of transmitting data via a cellular telephone system. Hence, it would have been obvious at the time the claimed invention was made to one of ordinary skill in the art to incorporate



the use of a packager that packages the fragments into the data packages such that the data packages are operable to be separately transmitted by a short message service over the conveying network, as taught by **Lahtinen** in the system that is capable of transmitting a displayable message of **Kralowetz** in order to transmit the displayable message via a cellular telephone system.

6. Claims 13 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kralowetz, et al** in view of **Pohjakallio.**

Kralowetz, et al disclose all subject matter claimed, note column 2, lines 19-29, column 3, line 66 to column 4, line 8, column 10, lines 24-44, etc., except for a packager for packaging the fragments into multiple data packages, the data packets include a reference parameter corresponding to the position of the fragment in the displayable message. **Pohjakallio** teaches the use a packager for packaging the fragments into multiple data packages, the data packets include a reference parameter corresponding to the position of the fragment in the message, note figures 4, 6, 7, and 8, for the purpose of transferring data in packet format based on existing connection establishment procedures of a cellular radiotelephone system. Hence, it would have been obvious to at the time the claimed invention was made to one of ordinary skill in the art to incorporate the use of a packager for packaging the fragments into multiple data packages, the data packets include a reference parameter corresponding to the position of the fragment in the message, as taught by **Pohjakallio**, in the system capable of transmitting a displayable message of **Kralowetz, et al** in order to transfer data in packet format based on existing connection establishment procedures of a cellular radiotelephone system.

Response to Arguments

7. Applicant's arguments filed April 3, 2000 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, **Lahtinen** teaches the use of a packager that packages the fragments into the data packages such that the data packages are operable to be separately transmitted by a short message service over the conveying network (figures 3, 4, 6, and 7) in a system capable of transmitting ***for the purpose of transmitting data via a cellular telephone system***. Hence, it would have been obvious at the time the claimed invention was made to one of ordinary skill in the art to incorporate the use of a packager that packages the fragments into the data packages such that the data packages are operable to be separately transmitted by a short message service over the conveying network, as taught by **Lahtinen** in the system that is capable of transmitting a displayable

message of **Kralowetz et al** ***in order to transmit the displayable message via a cellular telephone system.***

If **Kralowetz, et al's** proxy engine is not in the application protocol layer, as Applicants contend, the proxy engine should not be able to handle any type of application protocol. **Kralowetz, et al** clearly states, *"In our invention, the proxy engine conducts simultaneous communications sessions with the local endpoint application and the network endpoint application to determine what* ***protocol features*** *are supported by the endpoint applications. Additionally, the proxy engine supports or enables multiple advanced features available with the Point-To-Point Protocol, such as PPP MultiLink, various data compression techniques over PPP or PPP MultiLink, Challenge Handshake* ***Application Protocol*** *(CHAP) MD5, and any Link Control Protocol extensions that are implemented in the proxy engine, such as Link Control Protocol ECHO.sub.-- REQUEST, ECHO.sub.-- REPLIES, call back, endpoint identification, etc. Because these features are supported in the proxy engine, the user does not have to independently develop these features. The invention allows an application running above the proxy engine to "leverage", or take advantage of, all the advanced set of features described in the PPP Request For Comments, without supplementing any part of the PPP but the most basic feature of the set described in Request for Comments 1661, and possibly the Password Authentication Protocol and at least one Network Control Protocol. "* Since the

proxy engine handles an application protocol, it is in and operates in, inherently, an application protocol layer.

Conclusion

8. This is a continuation of applicant's earlier Application No. 08/572,481. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **WILLIAM D. CUMMING** whose telephone number is 703-305-4394. The examiner can normally be reached on Monday through Thursday, 9:30 to 5:30, EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **DAINIEL HUNTER** can be reached on 703-308-6732. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

WILLIAM D. CUMMING
Primary Examiner
Art Unit 2684

wdc
August 30, 2001

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